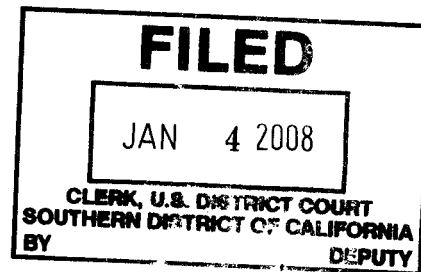


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7 United States of America



8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

07CR3347-JM

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 JOSE RUBEN NIETO-RESENDIZ,

14 Defendant.

Criminal Case No. ~~07CR2991-JM~~

DATE: January 4, 2008

TIME: 11:00 a.m.

15 UNITED STATES' NOTICE OF MOTIONS
AND MOTIONS FOR:

16 (1) FINGERPRINT EXEMPLARS

17 (2) RECIPROCAL DISCOVERY

18 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,
19 Karen P. Hewitt, United States Attorney, and David D. Leshner, Assistant United States Attorney, and
20 hereby files its Motions for Fingerprint Exemplars and Reciprocal Discovery in the above-referenced
21 case. Said motions are based upon the files and records of this case together with the attached
22 memorandum of points and authorities.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I**

3 **STATEMENT OF THE CASE**

4 On November 1, 2007, defendant Jose Ruben Nieto-Resendiz was arraigned on a one-count
5 Information charging him with being a deported alien found in the United States, in violation of Title
6 8, United States Code, Section 1326. Defendant entered a plea of not guilty.

7 On December 12, 2007, a federal grand jury in the Southern District of California returned a one-
8 count Indictment charging Defendant with a violation of Section 1326. Defendant has not yet been
9 arraigned on the Indictment.

10 **II**

11 **STATEMENT OF FACTS**

12 **A. Defendant's Apprehension**

13 On October 1, 2007, Border Patrol Agent F. Polo was performing line watch duties in Marron
14 Valley, an area approximately seven miles west of the Tecate, CA Port of Entry and four miles north
15 of the International Border. At approximately 12:30 p.m., Agent Polo responded to a seismic sensor
16 activation south of his location. Upon his arrival in the area of the sensor, Agent Polo observed
17 Defendant and two other individuals attempting to conceal themselves in dense underbrush near a foot
18 trail.

19 Agent Polo conducted field interviews of the three individuals. Defendant admitted to being a
20 citizen of Mexico and to having illegally entered the United States through the mountains near Tecate,
21 CA. Agent Polo placed all three individuals under arrest, and they were transported to the SR-94 Border
22 Patrol checkpoint for processing.

23 At approximately 3:30 p.m. on October 1, Defendant received Miranda warnings and agreed to
24 answer questions. Defendant stated that he is a citizen of Mexico and that he did not possess any
25 documents allowing him to enter the United States. According to Defendant, he entered the United
26 States from Mexico on September 30, 2007 by walking through the mountains west of Tecate, CA.

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1 **B. Defendant's Immigration History**

2 Defendant is a citizen of Mexico. On July 26, 2007, Defendant was removed from the United
3 States to Mexico pursuant to an Administrative Removal Order.

4 **C. Defendant's Criminal History**

5 On October 20, 2006, Defendant was convicted in Fresno County Superior Court of a felony
6 count of committing lewd and lascivious acts upon a child under the age of 14 years, in violation of
7 California Penal Code § 288(a). The Superior Court suspended imposition of judgment and sentence
8 and placed Defendant on five years formal probation. A condition of that probation was that Defendant
9 serve 365 days in jail.

10 **III**

11 **UNITED STATES' MOTIONS**

12 **A. Motion For Fingerprint Exemplars**

13 The United States requests that the Court order that Defendant make himself available for
14 fingerprinting by the United States' fingerprint expert. See United States v. Ortiz-Hernandez, 427
15 F.3d 567, 576-77 (9th Cir. 2005) (Government may have defendant fingerprinted and use criminal
16 and immigration records in Section 1326 prosecution). Identifying physical characteristics, including
17 fingerprints, are not testimonial in nature and the collection and use of such evidence would not violate
18 Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394,
19 397 (9th Cir. 1969). See also Schmerber v. California, 384 U.S. 757, 761 (1966) (withdrawal
20 of blood is not testimonial).

21 **B. Motion For Reciprocal Discovery**

22 The Government has and will continue to fully comply with its discovery obligations. To
23 date, the Government has provided Defendant with 34 pages of discovery and one DVD, including
24 reports of his arrest, his rap sheet, and copies of immigration and conviction documents. The
25 Government is prepared to schedule a viewing of Defendant's A-File. Furthermore, the Government
26 will request that the arresting agency preserve any evidence the Government intends to introduce in its
27 case-in-chief or that may be material to the defense.

28 ///

1 The Government moves the Court to order Defendant to provide all reciprocal discovery to
2 which the United States is entitled under Federal Rules of Criminal Procedure 16(b) and 26.2.
3 Specifically, Rule 16(b)(1) requires Defendant to disclose to the United States all exhibits, documents
4 and reports of testing or examination which Defendant intends to use in his case-in-chief at trial and a
5 written summary of the names, anticipated testimony, and bases for opinions of experts the defendant
6 intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

7 IV

8 CONCLUSION

9 For the foregoing reasons, the Government respectfully requests that the Court grant its motions.

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11 DATED: January 2, 2008.

Respectfully submitted,

12 Karen P. Hewitt
13 United States Attorney

14 s/ David D. Leshner
15 DAVID D. LESHNER
16 Assistant U.S. Attorney
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE RAMON NIETO-RESENDIZ,

Defendant.

Case No. 07CR2991-JM

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, DAVID D. LESHNER, am a citizen of the United States and am at least eighteen years of age.
My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **UNITED STATES NOTICE OF MOTIONS AND MOTIONS FOR FINGERPRINT EXEMPLARS AND RECIPROCAL DISCOVERY** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Shaffy Moeel, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 2, 2008.

/s/ David D. Leshner
DAVID D. LESHNER